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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,960	05/29/2001	Neil D. Scancarella	Rev 01-6	7403
26807	7590	02/08/2006	EXAMINER KIM, VICKIE Y	
JULIE BLACKBURN REVLON CONSUMER PRODUCTS CORPORATION 237 PARK AVENUE NEW YORK, NY 10017			ART UNIT 1618	PAPER NUMBER
DATE MAILED: 02/08/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/866,960

Applicant(s)

SCANCARELLA ET AL.

Examiner

Vickie Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 and 23-87 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 and 23-87 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Status of Application***

1. Acknowledgement is made of amendment filed 10/25/2005. The claims 1-21 and 23 are pending and presented for the examination.

### ***Response to Arguments***

2. Applicant's arguments filed 10/25/2005, with respect to the rejection(s) previous issued have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Vatter et al(US6696049).

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-21 and 22-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vatter et al(US6696049 ), alone, or if necessary, in view of Mcdermnott's(6248336) and Shah(WO00/47168).

The claims are drawn to a water and oil emulsion composition comprising at least one silicone resin film forming polymer, at least one silicone/acrylate copolymer or a vinyl/silicone copolymer or mixture thereof, at least one organic pigment wherein water is in an amount of 0.1-95% and oil is in an amount of 0.1-99% by weight.

Vatter's patented composition used for skin care products(e.g. eye make-up products such as eye shadow) comprising at least one silicone resin film forming polymer and silicone-acrylate type copolymers such as SA70, see col. 12, lines 38-48.

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The colorants comprising inorganic or organic pigments are taught at col. 17, lines 10-45. Furthermore, US'049(hereinafter) teaches water (0-95%, see col, 10, lines 45-47) and oils(cols. 8, line 4-col.10 , lines 40). Viscosity agent, volatile solvent, non-volatile oil, a dry particulate matter, etc are taught by the cited reference throughout the patented disclosure.

As mentioned in previous office action, the variations are considered to be minor and the modifications are routinely practiced(see Cosmetics, Science and Technology: color in Cosmetics, Chapter 44(1957) by Samuel Zuckerman, previously provided). Thus, it is the examiner's position that one having ordinary skill in the art would readily recognize that how to modify the formulation utilizing the ingredients taught and suggested by Vatter's to make the final cosmetic composition to satisfy user's need with better appearance and quality when Vatter's reference is taken alone or if necessary, taken in view of Shah and McDermott (their teachings are mentioned in previous office action) because it is well within the skill of those having ordinary skill in the art to adjust and employ different ingredients to arrive at a desired quality.

Although all the elements are not specifically included in any examples, one of ordinary skill in the art would have been readily understood and modified with proper substitution as suggested by Vatter's teaching. Thus, all the critical elements which are well taught by the cited reference and thus, the claimed subject matter is obvious variation and not patentably distinct over the prior art of the record.

### ***Conclusion***

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5. No claim is allowed. Having carefully reviewed applicants' Request for Reconsideration, the examiner issued the rejection in view of new reference.

However, the rejection is prepare based on substantially same reason where the minor differences do not render the claimed subject matter patentably distinct over the prior art of the record.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vickie Kim whose telephone number is 571-272-0579. The examiner can normally be reached on Tuesday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**VICKIE KIM  
PRIMARY EXAMINER**

Vickie Kim  
Primary Patent Examiner  
February 6, 2006  
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